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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 07-CV-6016

In Regard to the Matter of:

Bayside State Prison
Litigation

Opinion and Report
Of the
Special Master

MICHAEL HINDERSON

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

WEDNESDAY, FEBRUARY 13, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

251 South White Horse Pike

Audubon, New Jersey 08106

856-546-1100

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3 Transcript of proceedings in the above
4 matter taken by Theresa O. Mastroianni, Certified
5 Court Reporter, license number 30X100085700, and
6 Notary Public of the State of New Jersey at the
7 United States District Court House, One Gerry Plaza,
8 Camden, New Jersey, 08102, commencing at 9:30 AM.
9

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1 JUDGE BISSELL: I turn now to the
2 decision involving Michael Hinderson.

3 This opinion/report is being issued
4 pursuant to the directives of the Order of Reference
5 to a Special Master and the Special Master's
6 Agreement, and the guiding principles of law which
7 underlie this decision, to be applied to the facts
8 upon which it is based, are as set forth in the jury
9 instructions in the Walker and Mejias jury charges to
10 the extent applicable to the allegations in Mr.
11 Hinderson's case. As finalized after review under
12 Local Civil Rule 52.1, this transcript constitutes
13 the written report required under paragraph 7 of the
14 Order of Reference to a Special Master.

15 We are opening up the record in the
16 case of Michael Hinderson, plaintiff, case number
17 07-6016.

18 Mr. Hinderson was housed in trailer
19 number three. He testified that on August 1st of '97
20 the SOG unit came to his trailer and as they
21 approached him he heard them yell, quote, "There is
22 one on D-7 down," close quote, which he inferred (I
23 believe accurately) meant that he as a homosexual had
24 been identified as being in that location and on that
25 bunk.

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1 He was stripped and directed to lie
2 naked face down on the floor. In the course of
3 having him in this position, one of the officers
4 began to use his night stick, baton, however one
5 wants to describe it, to massage and play around with
6 his buttocks. Although he was not penetrated, it was
7 perfectly clear to Mr. Hinderson, and frankly to
8 anyone analyzing the testimony, that this was an
9 effort at sexual teasing which was designed to
10 embarrass Mr. Hinderson and did so.

11 When he flinched at this type of
12 activity which he did on more than one occasion, he
13 was hit with the night stick because he wasn't being
14 perfectly still as directed. I find that some seven
15 hard painful hits in his ribs and lower back and neck
16 were inflicted. These hits included not only being
17 struck with the baton, but also being kicked.

18 Plaintiff testified that he still
19 suffers from chronic back and neck pain as a result
20 of these incidents. I'll have a little more to say
21 about that later because, based upon the nature of
22 his own description of these events and, frankly, the
23 exercise of some rather plain common sense which any
24 fact finder is asked to do, I do not find that he
25 would have chronic back and neck pain of this

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1 duration over the course of ten-and-a-half years.

2 However, as I said, I'll have more to
3 say about that later.

4 He did, however, receive Motrin for his
5 back and headaches after he went to the full minimum
6 farm at Bayside in or about December of '97.

7 He began to complain of this event only
8 when he got to the farm unit and then did not mention
9 that the source was a beating. He also did not make
10 any contemporaneous reports or subsequent reports of
11 this beating to either the ombudsman, internal
12 affairs or anyone else then and there.

13 Once again, this is not without some
14 reason or level of understanding given the
15 intimidating atmosphere that pervaded this location
16 and the fact that retribution could be expected.

17 We are not dealing with exhaustion of
18 administrative remedies claim in this particular
19 case, so I'm not saying that this observation will
20 bind or preclude the raising of that defense in other
21 cases. But it certainly is, at least, an explanation
22 as to why he did not do so and, therefore, the fact
23 of non-reporting does not adversely impact his
24 credibility with regard to the injuries suffered, at
25 least not in this case.

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1 To be frank, his testimony was not
2 without some sources of impeachment. He's used in
3 the course of his life 15 different aliases
4 accompanied by Social Security numbers. I note the
5 reference to that event in the transcript of the 31st
6 of January, 2008 at page 69. He never sought
7 physical therapy anywhere at any time for these
8 injuries. Despite several opportunities up through
9 2001, he did not make reference to the fact that his
10 buttocks area had been involved in the assault.
11 Frankly, he's one who knows how to play the system
12 because he likes the lower bunk and has come to
13 realize that, if you complain of back pain and
14 perhaps support that with applications for
15 medication, you're likely to get the lower bunk.

16 On the other hand, at least by the time
17 he was in Southern State Prison in the year 2000 he
18 did recount to the nurse there the Bayside beating
19 and ascribed to it the injuries which he sustained
20 including the continuing pain.

21 I find also from the record that in or
22 about March of 2001 he fell out of a bunk at Southern
23 State and among other things received a collar for
24 his neck pain. Frankly, I determine that this is an
25 intervening cause, that more than likely is the

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1 source of continuing or at least any aggravated pain
2 in his back and neck thereafter.

3 I find it reasonable under all the
4 circumstances both in terms of time and events to
5 ascribe to this defendant a measure of back and neck
6 pain not as aggravated or exaggerated as he would
7 have us believe, but nevertheless as the result of
8 the beating inflicted upon him.

9 I'm going to recommend a recovery for
10 Mr. Hinderson based upon the entire record here
11 including the references that I have made.

12 Frankly, there is an inherent basis for
13 the truth in this. He was ID'd from the outset of
14 this incident as a homosexual. It was, of course, a
15 homosexual that had killed Mr. Baker not two days
16 before. It's entirely reasonable and I think an
17 appropriate inference from the facts as a whole that
18 particularly in the immediate wake of this homicide
19 by a member of the homosexual community (if you want
20 to call it that) at the Bayside Prison, a little
21 extra treatment, a little extra retaliation, more
22 than a little extra physical impact would be visited
23 upon other known homosexuals in the Bayside Prison
24 population.

25 The actions directed against this

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1 Plaintiff go well beyond the necessity of any proper
2 law enforcement needs or any proper exercise of
3 discipline or other legitimate penological purpose as
4 well defined in the jury instructions which I have
5 incorporated here.

6 There was, indeed, excessive and
7 unnecessary and, indeed, sadistic force imposed upon
8 Mr. Hinderson here within the contemplation of those
9 legal principles.

10 However, particularly in light of the
11 fact that the striking of Mr. Hinderson was neither
12 terribly intense nor prolonged, I do not find that
13 the beating visited upon him rose to the level of
14 being so egregious as to support a claim for punitive
15 damages against at least the officers.

16 Now, I realize, of course, the officers
17 were unidentified here, but there will come a time
18 when the issue arises as to what is the significance
19 of conduct by the perpetrators in terms of any impact
20 that that might have upon efforts to establish
21 supervisor liability.

22 So here I want to make it perfectly
23 clear that I do make a finding that the conduct,
24 although actionable and one which would support an
25 award of compensatory damages, was not so egregious

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1 as to support an award of punitive damages, under
2 applicable legal standards.

3 Finally, although not every item of
4 evidence has been discussed in this opinion/report,
5 all evidence presented to the Special Master was
6 reviewed and considered.

7 As I mentioned to you before, I find
8 the allegations of injuries as described here was
9 quite exaggerated both in duration and in its
10 severity. I accordingly recommend in this report
11 that the District Court enter an award of
12 compensatory damages in the amount of three thousand
13 dollars.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XI0857

Date: February 19, 2008

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